IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2006-0240
Appellee,	)	DEPARTMENT A
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
ERIC JASON PASTOR,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20050193

Honorable Robert Duber, II, Judge

AFFIRMED

Emily Danies — Tucson
Attorney for Appellant

P E L A N D E R, Chief Judge.

¶1 After a jury trial, appellant Eric Pastor was convicted of two counts of forgery, class four felonies, and two counts of theft, class six felonies. The jury found beyond a reasonable doubt the existence of several aggravating factors. The trial court imposed concurrent, aggravated terms of imprisonment on all four counts, with twelve-year terms imposed on each count of forgery and 4.5-year terms imposed on each count of theft.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has thoroughly reviewed the record on appeal and has found no meritorious issues to raise. She asks us to consider as an arguable issue whether the trial court erred in denying Pastor's motion for a directed verdict, made pursuant to Rule 20, Ariz. R. Crim. P., 17 A.R.S. Pastor did not file a supplemental brief.

¶3 We review the denial of a motion for a judgment of acquittal for an abuse of discretion and will reverse only if "there is a complete absence of probative facts to support the court's conclusion." *State v. Downing*, 171 Ariz. 431, 433, 831 P.2d 430, 432 (App. 1992), *citing State v. Mathers*, 165 Ariz. 64, 66, 796 P.2d 866, 868 (1990). A trial court should grant a judgment of acquittal only when "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). "Substantial evidence is more than a mere scintilla and is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *Mathers*, 165 Ariz. at 67, 796 P.2d at 869, *quoting State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). If reasonable minds can differ on the inferences to be drawn from the evidence, a trial court must submit the case to the jury and may not enter a judgment of acquittal. *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993). In applying these standards, we view the evidence in the light most favorable to sustaining the conviction and resolve all

inferences against the defendant. *See State v. Manzanedo*, 210 Ariz. 292, ¶ 3, 110 P.3d 1026, 1027 (App. 2005).

¶4 The charges against Pastor arose from the successful presentation of two checks for cash, each made payable to him in the amount of $612.43 and drawn on the same business account that had been previously closed by the business owner. Pastor was charged with one count each of forgery and theft pertaining to each check. Among the evidence presented at trial was Pastor's taped confession to Globe Police Officer Kalen Trimble, in which Pastor states he had come into possession of the two checks and "had them filled out and cashed them knowing that they were no good." In the statement, he also identifies the checks, numbered 2812 and 2822, as those he had cashed and states he "[j]ust blew [the money] basically," mostly on "motel rooms."

¶5 The record is somewhat unclear, but it appears Pastor sought to preclude the taped statements on the ground that the state had failed to establish a corpus delicti. To the extent we understand the argument he raised below, Pastor suggested the absence of any testimony directly identifying him as the person who had presented the checks rendered his statements inadmissible. His verbal, off-the-record motion to preclude having been denied, Pastor essentially renewed the argument as a basis for a motion for judgment of acquittal, arguing the state had offered insufficient evidence of identification to justify submitting any of the charges to the jury. He further argued there was no evidence of an "actual loss" to justify submitting either charge of theft to the jury.

¶6 The trial court did not abuse its discretion by admitting Pastor's statements and denying the Rule 20 motion. Under the principle of corpus delicti, "a person's incriminating statements may be used as evidence" only after the state has presented "proof that a certain result has occurred and that someone is criminally responsible for that result." *State v. Flores*, 202 Ariz. 221, ¶ 5, 42 P.3d 1186, 1187 (App. 2002). "In other words, the State must present proof that someone committed the crime with which the defendant is charged." *Id*. As charged here, the forgery allegations required proof that "with intent to defraud, the [defendant] . . . [o]ffer[ed] or present[ed], whether accepted or not, a forged instrument or one that contain[ed] false information." A.R.S. § 13-2002(A)(3). The theft allegations, in turn, required proof that "without lawful authority, the [defendant] knowingly . . . [c]ontrol[ed] property of another with the intent to deprive the other person of such property." A.R.S. § 13-1802(A)(1).

¶7 Before introducing Pastor's confession, the state presented evidence that someone had cashed one check at a pawn shop and the other at a grocery store. The pawn shop had required photo identification and a social security number from a person cashing a check made payable to "Erik Pastor." That person had provided the pawn shop employee who processed the transaction with a social security number shown at trial to match that of Pastor as well as photo identification sufficient to satisfy the employee that the person endorsing the check was "Erik Pastor." Likewise, the grocery store employee had required the person cashing the check to present a driver's license and had cashed a check made

payable to "Eric Pastor" on which the employee had recorded an Arizona driver's license number and date of birth matching Pastor's social security number and date of birth.

¶8 This circumstantial evidence was more than sufficient, when coupled with the remaining evidence, to justify the admission of Pastor's statements without violating corpus delicti principles. Contrary to Pastor's apparent claim below, direct identification testimony was not required to establish that "someone" had committed the crimes with which he was charged. *Flores*, 202 Ariz. 221, ¶ 5, 42 P.3d at 1187. And, given Pastor's statements, the evidence was certainly such that "'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *Mathers*, 165 Ariz. at 67, 796 P.2d at 869, *quoting Jones*, 125 Ariz. at 419, 610 P.2d at 53. The trial court therefore correctly denied Pastor's motion for a directed verdict on this basis.

¶9 To the extent Pastor alternatively argued that the absence of proof of an "actual loss" required a directed verdict in his favor on the charges of theft, the trial court again properly denied the motion. The elements of theft did not require proof of an actual loss suffered by the victim, but only proof that Pastor had, "without lawful authority, . . . knowingly . . . [c]ontrol[ed] property of another with the intent to deprive the other person of such property." § 13-1802(A)(1). Pastor's "actual loss" argument was thus misplaced.

¶10 Moreover, to the extent the actual *value* of the property alleged to have been controlled was at issue, the evidence showed that neither check had been honored, neither the pawn shop nor the grocery store had recouped the money each had disbursed to

whomever had cashed the checks, and each company had, in fact, suffered a loss of approximately $600. Accordingly, the thefts committed were class six felonies under the version of § 13-1802(E) in effect at the time of their commission in 2003. *See* 2000 Ariz. Sess. Laws, ch. 189, § 4. Substantial evidence from which reasonable jurors could find Pastor's guilt beyond a reasonable doubt having been presented, the trial court properly denied his motion for directed verdict on both counts of theft.

¶11 Pursuant to our obligation under *Anders*, we have searched the entire record and found no error that can be characterized as fundamental and prejudicial. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). Pastor's convictions and sentences are affirmed.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge